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21 Attorneys for Plaintiffs
22 ABBOTT DIABETES CARE INC.
23 and ABBOTT LABORATORIES

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

19 ABBOTT DIABETES CARE INC. and
20 ABBOTT LABORATORIES,

21 Plaintiffs,

22 vs.

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24 ROCHE DIAGNOSTICS CORPORATION
25 and BAYER HEALTHCARE LLC

26 Defendants.

CASE NO. C05-3117 MJJ

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JOINT STIPULATION RELATING TO
DEFENDANTS ROCHE'S AND BAYER'S
MOTIONS FOR PARTIAL SUMMARY
JUDGMENT AND PLAINTIFFS' MOTIONS
TO CONTINUE CONSIDERATION OF
DEFENDANTS' MOTIONS FOR SUMMARY
JUDGMENT

AND ~~PROPOSED~~ ORDER

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JOINT STIPULATION RELATING TO DEFENDANTS

ROCHE'S AND BAYER'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND

PLAINTIFFS' MOTIONS TO CONTINUE CONSIDERATION OF DEFENDANTS'

MOTIONS FOR SUMMARY JUDGMENT

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4 Plaintiffs Abbott Diabetes Care Inc. and Abbott Laboratories (collectively,

5 "Abbott") and Defendants Roche Diagnostics Operations, Inc., Roche Diagnostics Corp.

6 ("Roche") and Bayer Healthcare L.L.C. ("Bayer") (collectively, "Defendants") hereby file this

7 Joint Stipulation relating to Defendants Roche's and Bayer's Motions for Partial Summary

8 Judgment and Plaintiffs' Motions to Continue Consideration of Defendants' Motions for

9 Summary Judgment.

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11 On October 3, 2006, Roche and Bayer filed separate Motions for Partial Summary

12 Judgment related to laches (collectively, "Defendants' Motions for Summary Judgment"). On

13 October 23, 2006, Abbott filed Motions for Continuance of consideration of such motions under

14 Rule 56(f) of the Federal Rules of Civil Procedure (collectively, "Abbott's Motions for

15 Continuance") to permit the completion of necessary discovery related to Defendants' Motions

16 for Summary Judgment. Abbott's Motions for Continuance and Defendants' Motions for

17 Summary Judgment were set for hearing on Monday, December 11, 2006, at 2:30 p.m. The

18 Court notified the parties on Thursday, December 7, 2006, that only Abbott's Motions for

19 Continuance would be heard on December 11, 2006.

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21 Because the parties have now reached agreement regarding the discovery related

22 to the issues raised in Defendants' Motions for Summary Judgment, the parties are filing this

23 joint stipulation with respect to the scheduling of discovery, briefing, and the hearing. Counsel

24 for Bayer has represented to Abbott that all documents related to Bayer's claims of prejudice, as

25 asserted in its motion for partial summary judgment, have been produced to Abbott. Counsel for

26 Roche has represented to Abbott that all documents related to Roche's claims of prejudice, as

27 asserted in its motion for partial summary judgment, will have been produced to Abbott by

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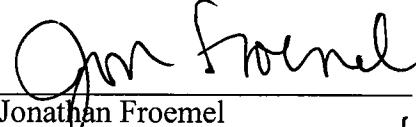
1 Wednesday, December 13, 2006. Based on these representations, Abbott has agreed to withdraw
2 its Motions for Continuance from consideration. With respect to Defendants' Motions for
3 Summary Judgment, the parties further stipulate as follows:

- 4 1. All discovery relating to Defendants' Motions for Summary Judgment
5 shall be completed by February 15, 2007.
- 6 2. Abbott will file its substantive opposition to the Defendants' Motions for
7 Summary Judgment on or before February 20, 2007.
- 8 3. Defendants will file their replies on or before March 6, 2007.
- 9 4. The hearing on Defendants' Motions for Summary Judgment will be reset,
10 at the Court's convenience, for on or after March 20, 2007.
- 11 5. Abbott hereby withdraws its Rule 56(f) Motions for Continuance filed on
12 October 23, 2006.

13 As a result of this joint stipulation, there is no longer a need for a hearing on Abbott's Motions for
14 Continuance on Monday, December 11, 2006. Accordingly, the parties respectfully request that
15 the Court cancel the hearing on Abbott's Motions for Continuance, and reset Defendants'
16 Motions for Summary Judgment for hearing, at the Court's convenience, on or after March 20,
17 2007.

1 DATED: December 8, 2006

BARNES & THORNBURG LLP

2 
3 Jonathan Froemel

*via facsimile
Shawn Hoban*

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5 ATTORNEYS FOR DEFENDANT ROCHE
6 DIAGNOSTICS CORPORATION

7 DATED: December 8, 2006

MORRISON FOERSTER

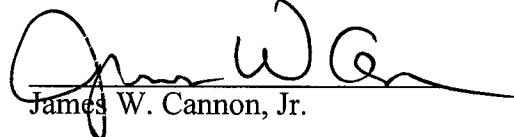
8 
9 Jason Bartlett

*via facsimile
Shawn Hoban*

10
11 ATTORNEYS FOR DEFENDANT BAYER
12 HEALTHCARE LLC

13 DATED: December 8, 2006

14 BAKER BOTTS L.L.P.

15 
James W. Cannon, Jr.

16 ATTORNEYS FOR PLAINTIFFS ABBOTT
17 DIABETES CARE INC. AND ABBOTT
18 LABORATORIES

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following counsel of record via electronic mail:

4	<i>Counsel for Roche Diagnostics Corporation</i>	<i>Counsel for Bayer Healthcare L.L.C.</i>
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I certify under the penalty of perjury that the foregoing is true and correct.

Executed on December 8, 2006, in Austin, Texas.



James W. Cannon, Jr.

[REDACTED] ORDER

Having considered the parties stipulation set forth above, the December 11, 2006 hearing on Abbott's Motions for Continuance is hereby VACATED, and Defendants' motions for partial summary judgment are RESET for hearing on March 20, 2007 at 9:30 a.m.

Dated: 12/11/2007

By:

Martin J. Jenkins

Honorable Martin J. Jenkins
UNITED STATES DISTRICT JUDGE